

**FILED**

**JAN - 2 2013**

**Board of Vocational Nursing  
and Psychiatric Technicians**

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9 **BEFORE THE**  
**BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2011-3463

13 **KATHRYN A. BARICH**  
17812 Falkirk Lane  
14 Huntington Beach, CA 92649

**A C C U S A T I O N**

15 **Vocational Nurse License No. VN 241198**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
22 Technicians, Department of Consumer Affairs.

23 2. On or about April 7, 2009, the Board of Vocational Nursing and Psychiatric  
24 Technicians issued Vocational Nurse License Number VN 241198 to Kathryn A. Barich  
25 (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to  
26 the charges brought herein and will expire on May 31, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500)

1 of this code, or any initiative act referred to in that division, from taking disciplinary  
2 action against a licensee or from denying a license for professional misconduct,  
3 notwithstanding that evidence of that misconduct may be recorded in a record  
4 pertaining to an arrest.

5 This section shall not be construed to apply to any drug diversion program  
6 operated by any agency established under Division 2 (commencing with Section 500)  
7 of this code, or any initiative act referred to in that division.

8 9. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a  
10 board within the department pursuant to law to deny an application for a license or to  
11 suspend or revoke a license or otherwise take disciplinary action against a person who  
12 holds a license, upon the ground that the applicant or the licensee has been convicted  
13 of a crime substantially related to the qualifications, functions, and duties of the  
14 licensee in question, the record of conviction of the crime shall be conclusive  
15 evidence of the fact that the conviction occurred, but only of that fact, and the board  
16 may inquire into the circumstances surrounding the commission of the crime in order  
17 to fix the degree of discipline or to determine if the conviction is substantially related  
18 to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, "license" includes "certificate," "permit," "authority,"  
20 and "registration."

21 10. Section 2878 of the Code states:

22 The Board may suspend or revoke a license issued under this chapter [the  
23 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
24 following:

25 (a) Unprofessional conduct, which includes, but is not limited to, the  
26 following:

27 . . . .

28 (d) Violating or attempting to violate, directly or indirectly, or assisting in or  
abetting the violating of, or conspiring to violate any provision or term of this chapter.

. . . .

(f) Conviction of a crime substantially related to the qualifications, functions,  
and duties of a licensed vocational nurse, in which event the record of the conviction  
shall be conclusive evidence of the conviction.

. . . .

11. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning  
of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
a person licensed under this chapter to do any of the following:

1 (a) Obtain or possess in violation of law, or prescribe, or except as directed by  
2 a licensed physician and surgeon, dentist or podiatrist administer to himself or herself  
3 or furnish or administer to another, any controlled substance as defined in Division 10  
4 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

5 (b) Use any controlled substance as defined in Division 10 of the Health and  
6 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic  
7 beverages, to an extent or in a manner dangerous or injurious to himself or herself,  
8 any other person, or the public, or to the extent that the use impairs his or her ability  
9 to conduct with safety to the public the practice authorized by his or her license.

10 (c) Be convicted of a criminal offense involving possession of any narcotic or  
11 dangerous drug, or the prescription, consumption, or self-administration of any of the  
12 substances described in subdivisions (a) and (b) of this section, in which event the  
13 record of the conviction is conclusive evidence thereof.

14 . . . .

15 12. Section 2878.6 of the Code states:

16 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
17 made to a charge substantially related to the qualifications, functions and duties of a  
18 licensed vocational nurse is deemed to be a conviction within the meaning of this  
19 article. The board may order the license suspended or revoked, or may decline to  
20 issue a license, when the time for appeal has elapsed, or the judgment of conviction  
21 has been affirmed on appeal or when an order granting probation is made suspending  
22 the imposition of sentence, irrespective of a subsequent order under the provisions of  
23 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty  
24 and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
25 the accusation, information or indictment.

## 26 REGULATORY PROVISIONS

27 13. California Code of Regulations, title 16, section 2504.1 states:

28 If the board or its designee asks a licensee to provide criminal history  
information, a licensee shall respond to that request within 30 days. The licensee shall  
make available all documents and other records requested and shall respond with  
accurate information.

14. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to  
Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
crime or act shall be considered to be substantially related to the qualifications,  
functions or duties of a licensed vocational nurse if to a substantial degree it  
evidences present or potential unfitness of a licensed vocational nurse to perform the  
functions authorized by his license in a manner consistent with the public health,  
safety, or welfare. Such crimes or acts shall include but not be limited to those  
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

1 (b) A conviction of practicing medicine without a license in violation of  
2 Chapter 5 of Division 2 of the Business and Professions Code.

3 (c) Violating or attempting to violate, directly or indirectly, or assisting in or  
4 abetting the violation of, or conspiring to violate any provision or term of Chapter  
5 6.5, Division 2 of the Business and Professions Code.

6 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,  
7 whether a licensed physician or not, in the performance of or arranging for a violation  
8 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and  
9 Professions Code.

10 (e) Conviction of a crime involving fiscal dishonesty.

11 (f) Any crime or act involving the sale, gift, administration, or furnishing of  
12 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the  
13 Business and Professions Code."

14 15. California Code of Regulations, Title 16, section 2522 states:

15 When considering a) the denial of a license under Section 480 of the Business  
16 and Professions Code, b) the suspension or revocation of a license on the ground that  
17 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license  
18 under Section 2787.7 of the Business and Professions Code, the Board in evaluating  
19 the rehabilitation of an individual and his or her present eligibility for a license, will  
20 consider the following criteria:

21 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

22 (2) Actual or potential harm to the public.

23 (3) Actual or potential harm to any patient.

24 (4) Overall disciplinary record.

25 (5) Overall criminal actions taken by any federal, state or local agency or court.

26 (6) Prior warnings on record or prior remediation.

27 (7) Number and/or variety of current violations.

28 (8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence and/or  
court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory  
agencies.

(13) Other rehabilitation evidence.

1 **COSTS**

2 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **DRUGS**

9 17. Methamphetamine is a Schedule II controlled substance as designated by Health  
10 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business  
11 and Professions Code section 4022.

12 18. Psilocybin is a Schedule I controlled substance as designated by Health and Safety  
13 Code section 11054, subdivision (d)(18), and is a dangerous drug pursuant to Business and  
14 Professions Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(March 8, 2010 Criminal Convictions for DUI on January 16, 2010)**

17 19. Respondent has subjected her license to disciplinary action under sections 490 and  
18 2878, subdivision (f) of the Code in that Respondent was convicted of crime that are substantially  
19 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
20 circumstances are as follows:

21 a. On or about March 8, 2010, in a criminal proceeding entitled *People of the*  
22 *State of California v. Kathryn Alise Barich, aka Kathryn A. Barich*, in Orange County Superior  
23 Court, case number 10WM01865, Respondent was convicted on her plea of guilty of violating  
24 Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol (Count 1),  
25 and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of  
26 0.08 percent or higher (Count 2), misdemeanors. The court stayed sentence on Count 2 pursuant  
27 to Penal Code section 654. The court certified Respondent's BAC as .14 percent.

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b. As a result of the convictions, on or about March 8, 2010, Respondent was granted three years informal probation, and ordered to complete a three-month Level I First Offender Alcohol Program, attend a MADD Victim Impact Panel session, pay fees, fines, and restitution, and comply with standard DUI probation terms.

c. The facts that led to the convictions are that on about the evening of January 16, 2010, the Huntington Beach Police Department received a citizen complaint from a witness stating that she was driving on a major thoroughfare when she was almost sideswiped by Respondent, who was weaving in and out of her lane. Respondent was spotted by a police helicopter; it followed her as she made multiple lane changes. A patrol officer located Respondent's vehicle and followed her as she continued to weave and make lane changes. Respondent made a U-turn, nearly colliding with a curb, and continued weaving and changing lanes. The officer activated his emergency lights and siren and conducted a traffic stop in a parking lot. Upon making contact with Respondent, she stated that she was putting her make-up on. Respondent had a strong odor of an alcoholic beverage on her breath, and her eyes were glassy, watery. Respondent submitted to a series of field sobriety tests which she was unable to perform as explained and demonstrated by the officer. Respondent provided two breath samples which were analyzed by the preliminary alcohol screening device with a BAC of .12 percent. Respondent was arrested for driving under the influence. During booking, Respondent provided a blood sample.

## SECOND CAUSE FOR DISCIPLINE

**(Use of Alcohol in a Dangerous Manner)**

20. Respondent has subjected her license to disciplinary action under section 2878.5, subdivision (b) of the Code for unprofessional conduct in that on or about January 16, 2010, Respondent used alcohol in a manner dangerous or injurious to herself and others, in that she operated a motor vehicle on a public roadway while intoxicated as described in paragraph 19, above. In Respondent's plea agreement, she stated "On 1-16-2010 in Orange County, I drove a car while I was under the influence of alcohol and while my BAC was  $\geq .08\%$ . My BAC was .14%."

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Criminal Convictions Involving the Consumption of Alcohol)**

3 21. Respondent has subjected her license to disciplinary action under section 2878.5,  
4 subdivision (c) of the Code for unprofessional conduct in that on or about March 8, 2010,  
5 Respondent was convicted of alcohol-related crimes, as described in paragraph 19, above.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Illegal Possession of Controlled Substances &**

8 **Controlled Substance Paraphernalia on February 4, 2012)**

9 22. Respondent is subject to disciplinary action under section 2878.5, subdivision (a) of  
10 the Code in that she illegally possessed the controlled substances methamphetamine and  
11 psilocybin. The circumstances are as follows:

12 a. On or about the morning of February 4, 2012, an officer with the Newport  
13 Beach Police Department was conducting traffic enforcement when he observed Respondent roll  
14 through a red stoplight at an intersection. The officer initiated a traffic stop and made contact  
15 with Respondent. The officer observed that Respondent appeared visibly nervous, her speech  
16 was very rapid, and she was unable to sit in a fixed position in her driver's seat. A records check  
17 confirmed that Respondent's driver's license was suspended/revoked. Respondent consented to a  
18 search of her vehicle. Inside a black bag behind the driver's seat, the officer located a glass pipe  
19 commonly used to smoke methamphetamine, a small white baggie containing a white powdery  
20 substance that later tested positive for 0.7 grams of methamphetamine, and two pieces of dried  
21 psilocybin. Respondent was arrested for possession of controlled substances, and possession of  
22 controlled substance paraphernalia

23 b. As a result of the arrest, on or about March 20, 2012, in a criminal proceeding  
24 entitled *People of the State of California v. Kathryn Alise Barich*, in Orange County Superior  
25 Court, case number 12HF0673, on the motion of the *People*, the case was dismissed.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violating the Provisions or Terms of the Nursing Practice Act)**

3 23. Respondent has subjected her license to disciplinary action under section 2878,  
4 subdivisions (a) and (d) of the Code for unprofessional conduct, in that she failed to comply with  
5 California Code of Regulations, title 16, section 2504.1, which requires a licensee to respond to  
6 the Board's request for criminal history information within 30 days. The circumstances are as  
7 follows:

8 a. In a letter to Respondent dated March 1, 2012, an Enforcement Analyst with  
9 the Board requested that Respondent provide criminal history information regarding her arrest for  
10 possession of controlled substances on February 4, 2012, as described in paragraph 22, above.  
11 Respondent was directed to return the requested information within 30 days. Respondent failed  
12 to reply to the Board's request to provide criminal history information.

13 b. In a letter to Respondent dated June 6, 2012, a second request was made by an  
14 Enforcement Analyst to provide criminal history information, including a detailed description of  
15 the events that led to her arrest, within 30 days. Respondent failed to reply to the Board's request  
16 to provide criminal history information.

17 c. In a letter to Respondent dated July 31, 2012, an Enforcement Analyst made a  
18 final request to Respondent that she provide information regarding her February 4, 2012 arrest.  
19 Respondent has failed to reply to the Board's requests to provide criminal history information.

20 **DISCIPLINARY CONSIDERATIONS**

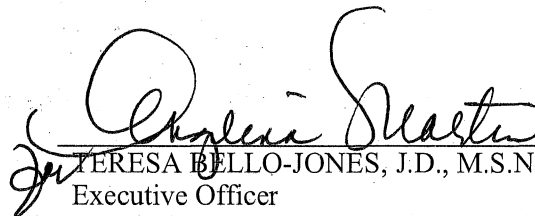
21 24. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
22 to California Code of Regulations, title 16, section 2522, Complainant alleges that after  
23 evaluating Respondent's conviction for driving under the influence, as described in paragraph 19,  
24 above, an Enforcement Analyst from the Board advised Respondent in a letter dated June 10,  
25 2010, that the Board would not pursue disciplinary action against her license at that time.  
26 However, Respondent was warned that future substantiated reports of similar behavior, or other  
27 violations of the law, or violations of regulations governing the practice of a vocational nurse,  
28 could result in disciplinary action against Respondent's license.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 241198, issued to Kathryn A. Barich;
2. Ordering Kathryn A. Barich to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: January 2, 2013



TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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